Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Exclusive Service Contracts for Provision of	)	MB Docket No. 07-51
Video Services in Multiple Dwelling Units and	)	
Other Real Estate Developments	)	
	)	

COMMENTS OF HOTWIRE COMMUNICATIONS, LLC

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INTRODUCTION

Hotwire Communications, LLC ("Hotwire") is a provider of cable television, high speed Internet, and other communications services based in Pennsylvania. By any of the definitions adopted by the Commission, Hotwire qualifies as a small cable operator.[1] As a small cable operator, it is essential that Hotwire is able to enter into and maintain exclusive contracts. Entering into exclusive contracts affords Hotwire the only means possible to undertake the capital investment and incur ongoing costs necessary to provide services in competition with significantly larger providers that dominate the market. If the Commission impairs Hotwire's existing contracts or ability to enter into new exclusive contracts, quite simply, Hotwire will cease being a competitor in this market.

HOTWIRE'S BACKGROUND

Hotwire is privately owned and has been operating since 2002. Hotwire began providing cable services, broadband Internet service and other communications services to residential subscribers in muli-dwelling unit communities ("MDUs"). Hotwire commenced service in Philadelphia, PA, and has now expanded to provide service in six states: Pennsylvania, New Jersey, New York, South Carolina, Maryland and Florida. Hotwire primarily provides services in MDUs and private, residential developments. Hotwire's subscribers live within rental apartments, or homeowner or condominium associations (collectively "Associations") and receive service from Hotwire pursuant to exclusive contracts with such Associations.

[1] Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide. 47 C.F.R. §76.901(e). The Commission determined that this size equates approximately to $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation,* Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995). Under either definition, Hotwire qualifies as a small cable company.

Hotwire's cable, broadband, and communications services are competitive with and comparable to the services offered by the dominant franchised multiple system operators ("MSOs"), the two national direct broadcast satellite ("DBS") providers, and the Incumbent Local Exchange Carriers ("ILECs") that provide services in Hotwire's service areas. Hotwire offers basic and expanded cable services, High Definition TV, digital and other premium and advanced cable services, as well as high speed broadband Internet access, and Voice over Internet Protocal ("VoIP"), the so called "triple play" of services.

While Hotwire's technology and services are competitive with and often superior to large MSOs and ILECs, Hotwire cannot undertake the capital investment necessary to overbuild the dominant MSO and ILEC in a particular service area to compete head-to-head. As the Commission is well aware, MSOs generally have not overbuilt and do not compete with each other. Similarly, ILECs do not provide services in each others' territories. Such head to head competition is simply not part of their business strategies. Rather, they seek to increase their subscribers in their established territories and increase their revenue per subscriber by expanding products offered.

This is the environment in which small cable operators, such as Hotwire, must compete. While large MSOs, DBS providers, and ILECs certainly have advantages as a result of their capital and market power, Hotwire is able to compete for contracts to provide services to consumers within both newly constructed and existing single-family developments and MDUs that are not under existing contracts.

In addition, frachised cable operators often have the ability to provide cable service to developments and MDUs, even if the property owner or Association enters into an exclusive contract with another provider.[2] Accordingly, cable and DBS video providers (collectively "cable providers") often enter into contracts that are both exclusive and bulk, in which the provider submits one bill to the Association for particular services, and residents pay the Association through their homeowner assessments for such services. Residents then may subscribe individually to optional services directly with the provider. Similarly, ILECs often enter into such exclusive bulk contracts for voice and/or broadband Internet access, and recently cable service.

Hotwire's business model is to provide services only under exclusive contracts and typically on a bulk basis for certain cable, broadband Internet, and/or VoIP services. These contracts not only offer advantages to the provider, but offer significant advantages to consumers including, but not limited to, the provision of unique services and deep discounts on the services provided on a bulk basis. In addition, such contracts with Associations often provide additional services not otherwise available to consumers on a retail basis. These additional services often include community channels for residents, security channels or websites in which residents can view a community's entrances, free cable and broadband Internet services to fitness centers and common areas, and specialized programming.

THE COMMISSION SHOULD NOT TAKE ACTION THAT WOULD HARM THE ABILITY OF HOTWIRE TO COMPETE THROUGH EXCLUSIVE CONTRACTS; TO THE EXTENT THE COMMISSION REGULATES EXCLUSIVE CONTRACTS, IT SHOULD EXEMPT SMALL CABLE OPERATORS AND ADDRESS PERPETUAL CONTRACTS HELD BY PROVIDERS WITH MARKET POWER.

[2] Pursuant to federal law, franchised cable operators may use compatible utility easements in private developments. In addition, many states' laws provide mandatory access to MDUs for franchised cable operators. See, e.g. Fla. Stat. §718.1232.

I. The Commission Should Not Impair or Regulate Exclusive Agreements Between Small Cable Operators and Developers or Associations.

Hotwire has entered into several exclusive bulk agreements with Associations to provide service to MDUs and developments. Hotwire's percentage of the market to date is very small. However, Hotwire's competition is very important to the niche market of developers and consumers within Associations and such contracts are the only mechanism through which Hotwire is able to compete. If the Commission interferes with these existing contracts, it will essentially force Hotwire, and many other small cable operators, out of business.

Moreover, these contracts were not entered by Associations as a result of Hotwire's market power. Rather, Hotwire had to compete aggressively for such contracts, by offering services, rates and other terms that were better than those offered by the incumbent MSO and/or ILEC in the market.

Hotwire has made substantial economic investment in the properties under contract. Hotwire typically installs a headend at the property's location and constructs its system to provide services to the units within the property. Fixed costs of construction for Hotwire are consistent with national averages. The Associations under contract with Hotwire range anywhere from 100 units to several thousand unit MDUs. Accordingly, Hotwire has invested anywhere from $50,000 to over $1 million in fixed capital costs per property. In addition, Hotwire incurs substantial ongoing costs, including higher programming costs than those paid by MSOs. Since Hotwire's contracts are bulk contracts, Hotwire provides basic cable and often high speed Internet and VoIP services at substantial discounts. Thus, while Hotwire may serve 100% of the residents of such properties, its revenue per subscriber is less than revenue of retail subscribers. The only basis Hotwire can make this investment is if it has an expectation of generating a return through such exclusive bulk contracts for a certain period of time.

In addition, small cable operators such as Hotwire do not have the name recognition, marketing power, or sales force as MSOs, large DBS providers, and ILECs. They must compete based on their local reputation. To remain a successful competitor, Hotwire must provide excellent service and not be complacent or non-responsive to customers. The developers and Associations with which Hotwire negotiates such contracts have become very sophisticated. They understand that to sell or rent their units successfully, they must ensure that buyers have first rate cable, Internet and voice services available at reasonable rates. They will not enter agreements that may impact negatively their ability to sell or rent homes. As the Commission can well appreciate, this is an extremely competitive negotiation. The dominant MSOs and ILECs are able to provide services if a property does not reach agreement with Hotwire. Hotwire's existing exclusive contracts are thus the product of arms-length negotiations in a very competitive environment. Such contracts benefit consumers by ensuring first rate services at discounted rates. Hotwire respectfully submits that any action by the Commission that affects its existing contracts will not only harm Hotwire, but will deprive consumers from realizing the benefits of their negotiated contracts.

Exclusive contracts with small cable operators do not impede the goals of enhancing competition and accelerating the deployment of broadband. Rather, they support such goals by ensuring that small cable operators compete aggressively and offer an alternative to the area's MSO or ILEC, and that such dominant providers do not become complacent in the belief that they are the "only game in town."

In addition, despite tremendous consolidation among ILECs and large MSOs, it has been Hotwire's experience that competition in the MDU and residential development market among video and broadband service providers is growing. A request for proposals from a developer of a residential community may now typically receive responses from not only the area's MSO and ILEC, but four or five well-positioned small cable operators, such as Hotwire. Enhancements in technology and changes in state and federal laws, including but not limited to state cable franchising and rules concerning access to home run wiring in MDUs have assisted small cable operators' ability to compete. Any action by the Commission that impairs Hotwire's existing exclusive contracts or its ability to enter into such contacts in the future will eliminate Hotwire, as well as other small cable operators, from this competitive market. Accordingly, Hotwire respectfully requests that the Commission not regulate or impair exclusive contracts entered into by small cable operators.

II. To the extent the Commission Regulates Exclusive Contracts, It Should Address Perpetual Contracts Entered by MSOs.

Another significant advantage large MSOs have is that for many years, they were in fact, the only game in town. Under these circumstances, cable MSOs often used their monopoly position to compel developers and Associations to enter into contracts with either excessively long or perpetual terms. Such contracts typically provide that they are automatically renewed for additional lengthy terms as long as the company has authority to provide service and are freely assignable and thus, have continued through numerous mergers and acquisitions.

While Associations and developers do not enter into such contracts now, there remain a large number of such contracts entered many years ago in existence. Such contracts cover thousands of residents in Hotwire's service areas. While state law may consider such contracts illegal, it remains burdensome and costly for Associations to litigate to terminate such contracts.

Such contracts are anti-consumer. By their very nature, they were entered into on behalf of consumers who did not have equal bargaining power with the monopoly cable provider. They typically do not protect consumers from increases in rates or ensure that consumers obtain newly developed services at reasonable rates.

The continued existence of perpetual contracts in numerous MDUs and developments serves no valid purpose, prevents competition and harms consumers. To the extent that the Commission determines to regulate exclusive contracts, it would be appropriate to put an end to perpetual contracts entered into many years ago by cable MSOs. There are many alternatives for the Commission to address such contracts. For example, it may be possible to that such contracts terminate at the end of their existing term or within a set number of years. Such action by the Commission would strongly advance competition and afford relief to consumers under such contracts.

CONCLUSION

Hotwire respectfully requests that the Commission not take any action that would impair Hotwire's existing contracts or its ability to enter into such exclusive bulk contracts in the future. Any such action by the Commission would impede Hotwire's and other small cable operators' ability to compete. To the extent the Commission regulates exclusive contracts, the Commission should exempt contracts entered into by small cable operators. Further, the Commission should address perpetual contracts entered by the dominant multiple system operators in their territories many years ago. Such contracts serve no purpose, impede competition and are anti-consumer.

Respectfully submitted,

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